

House File 2326 - Introduced

HOUSE FILE 2326
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 531)

A BILL FOR

1 An Act relating to payments from the indigent defense fund by
2 the state public defender, and providing penalties.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 13B.4, subsection 4, paragraph d, Code
2 2014, is amended by striking the paragraph.

3 Sec. 2. NEW SECTION. 13B.4A **Judicial review of agency**
4 **action.**

5 1. Notwithstanding chapter 17A, a claimant for payment of
6 indigent defense costs may seek judicial review of the state
7 public defender's final agency action denying or reducing any
8 claim by filing a motion for judicial review in the court with
9 jurisdiction over the original appointment. This section is
10 the sole and exclusive method of seeking judicial review of the
11 state public defender's action on any claim for payment.

12 a. A claimant may only file the motion after the state
13 public defender has taken final agency action, as defined by
14 the state public defender, on the claim, and the claimant must
15 file the motion within thirty days of the date that the state
16 public defender provides notice of the final agency action to
17 the claimant.

18 b. Failure to seek judicial review within thirty days of
19 the date that the state public defender provides notice to the
20 claimant of final agency action as defined by the state public
21 defender shall preclude any judicial review of the action taken
22 by the state public defender.

23 c. The motion must clearly and concisely set forth the
24 grounds for error and any other grounds the claimant intends
25 to rely upon when challenging the action of the state public
26 defender.

27 2. a. The court shall set the motion for hearing and
28 provide the state public defender with at least ten days'
29 notice of the hearing. The state public defender shall not
30 be required to file a resistance to the motion for judicial
31 review.

32 b. The claimant or state public defender may participate
33 in the hearing by telephone. If the state public defender
34 participates by telephone, the state public defender shall be
35 responsible for initiating the telephone call and paying all

1 telephone charges incurred for the hearing.

2 3. The claimant shall have the burden to show by a
3 preponderance of the evidence any of the following, otherwise
4 the action of the state public defender shall be affirmed:

5 a. The action of the state public defender violates the
6 Constitution of the United States or the Constitution of the
7 State of Iowa, a statute, or an administrative rule adopted by
8 the state public defender.

9 b. The action of the state public defender is unreasonable,
10 arbitrary, capricious, or an abuse of discretion.

11 4. In a hearing on a motion for judicial review of an action
12 of the state public defender the following shall apply:

13 a. The state public defender's interpretation of a statute,
14 which the state public defender is vested with discretion
15 to interpret pursuant to section 13B.4, subsection 8, is
16 binding on the court unless the interpretation is irrational,
17 illogical, or a wholly unjustifiable interpretation of the law.

18 b. Factual findings of the state public defender must be
19 accepted by the court unless not supported by substantial
20 evidence.

21 c. If the state public defender provides an administrative
22 procedure for review of an action on a claim, the court shall
23 not consider any grounds for error or any other grounds unless
24 raised with the state public defender prior to the final agency
25 action, and the court shall not admit new evidence that was
26 not presented to the state public defender prior to the final
27 agency action.

28 5. If the state public defender is not first notified and
29 given an opportunity to be heard, any court order entered after
30 the state public defender has taken action on the claim, which
31 affects the claim, is void.

32 6. The decision of the court following a hearing on a motion
33 for judicial review is a final judgment appealable by either
34 the claimant or state public defender.

35 Sec. 3. Section 13B.4B, subsection 2, paragraphs c and d,

1 Code 2014, are amended to read as follows:

2 *c.* The state public defender may in the state public
3 defender's sole discretion release claims and supporting
4 documents, including any information that would otherwise
5 be confidential in sections 232.147 through 232.150, to the
6 auditor of state, the Iowa supreme court attorney disciplinary
7 board, the grievance commission of the supreme court of Iowa,
8 or to other state or local agencies to the extent necessary
9 to investigate fraud or other criminal activity against the
10 attorney or vendor submitting the claim.

11 *d.* The state public defender may release the claim and
12 supporting documents to the court with respect to a hearing
13 held under section ~~13B.4, subsection 4, paragraph "d"~~ 13B.4A.

14 Sec. 4. Section 232.151, Code 2014, is amended to read as
15 follows:

16 **232.151 Criminal penalties.**

17 Any person who knowingly discloses, receives, or makes
18 use or permits the use of information derived directly or
19 indirectly from the records concerning a child referred to in
20 sections 232.147 ~~to~~ through 232.150, except as provided by
21 those sections or section 13B.4B, subsection 2, paragraph "c",
22 shall be guilty of a serious misdemeanor.

23 Sec. 5. Section 600A.6A, subsection 2, Code 2014, is amended
24 to read as follows:

25 2. If the parent against whom the petition is filed desires
26 but is financially unable to employ counsel, the court,
27 ~~following an in-court colloquy,~~ shall appoint counsel for the
28 person if ~~all of the following criteria are met:~~

29 ~~a. The person requests appointment of counsel.~~

30 ~~b. The person is indigent.~~

31 ~~c. The court determines both of the following:~~

32 ~~(1) The person, because of lack of skill or education, would~~
33 ~~have difficulty in presenting the person's version of the facts~~
34 ~~in dispute, particularly where the presentation of the facts~~
35 ~~requires the examination or cross-examination of witnesses or~~

1 ~~the presentation of complex documentary evidence.~~

2 ~~(2) The person has a colorable defense to the termination~~
3 ~~of parental rights, or there are substantial reasons that~~
4 ~~make termination of parental rights inappropriate~~ the person
5 requests appointment of counsel and the court determines that
6 the person is indigent.

7 Sec. 6. Section 600A.6B, Code 2014, is amended to read as
8 follows:

9 **600A.6B Payment of attorney fees.**

10 1. A person filing a petition for termination of parental
11 rights under this chapter ~~or the person on whose behalf the~~
12 ~~petition is filed~~ shall be responsible for the payment of
13 reasonable attorney fees for services provided by counsel
14 appointed pursuant to section 600A.6A in juvenile court or in
15 an appellate proceeding initiated by the person filing the
16 petition unless the person filing the petition is a private
17 child-placing agency ~~as defined in section 238.1~~ licensed under
18 chapter 238 or ~~unless~~ the court determines that the person
19 filing the petition ~~or the person on whose behalf the petition~~
20 ~~is filed~~ is indigent.

21 2. If the person filing the petition is a private
22 child-placing agency ~~as defined in section 238.1~~ licensed
23 under chapter 238 or if the person filing the petition ~~or the~~
24 ~~person on whose behalf the petition is filed~~ is indigent, the
25 ~~appointed attorney shall be paid reasonable attorney fees~~
26 prospective parent on whose behalf the petition is filed
27 shall be responsible for the payment of reasonable attorney
28 fees for services provided in juvenile court or an appellate
29 proceeding ~~as determined by the state public defender~~ for
30 counsel appointed pursuant to section 600A.6A unless the court
31 determines that the prospective parent on whose behalf the
32 petition is filed is indigent.

33 3. If the prospective parent on whose behalf the petition
34 is filed is indigent, and if the person filing the petition
35 is indigent or a private child-placing agency licensed under

1 chapter 238, the appointed counsel shall be paid reasonable
2 attorney fees as determined by the state public defender from
3 the indigent defense fund established in section 815.11.

4 ~~3.~~ 4. If the parent against whom the petition is filed
5 appeals a termination order under section 600A.9, subsection 1,
6 paragraph "b", the person who filed the petition or the person
7 on whose behalf the petition is filed shall not be responsible
8 for the payment of attorney fees for services provided by
9 counsel appointed pursuant to section 600A.6A in the appellate
10 proceeding. Instead, the appointed attorney shall be paid
11 reasonable attorney fees as determined by the state public
12 defender from the indigent defense fund established pursuant
13 to section 815.11.

14 ~~4.~~ 5. The state public defender shall review all the
15 claims submitted under ~~this section~~ subsection 3 or 4 and shall
16 have the same authority with regard to the payment of these
17 claims as the state public defender has with regard to claims
18 submitted under chapters 13B and 815, including the authority
19 to adopt rules concerning the review and payment of claims
20 submitted.

21 EXPLANATION

22 The inclusion of this explanation does not constitute agreement with
23 the explanation's substance by the members of the general assembly.

24 This bill relates to payments from the indigent defense fund
25 by the state public defender.

26 The bill strikes the current provisions for judicial review
27 of an indigent fee claim in Code section 13B.4(4)(d) and
28 replaces this provision with new Code section 13B.4A. Under
29 the bill, an indigent defense claimant may seek judicial review
30 of the final agency action of the state public defender denying
31 or reducing an indigent defense claim by filing a motion
32 for judicial review in the court with jurisdiction over the
33 original court appointment.

34 The bill requires the motion to be filed within 30 days of
35 the date that the state public defender provides notice of the

1 final agency action to the claimant. The bill also requires
2 the motion to clearly and concisely set forth the grounds
3 for error the claimant intends to rely upon when challenging
4 the final agency action of the state public defender. Under
5 the bill, failure to seek judicial review within 30 days of
6 the notice provided by the state public defender precludes
7 any judicial review of the action taken by the state public
8 defender.

9 The bill requires the motion to be set for a hearing and that
10 the state public defender be provided at least 10 days' notice
11 of the hearing. The bill does not require the state public
12 defender to file a resistance to the motion. The claimant or
13 state public defender may appear at the hearing by telephone,
14 however, if the state public defender appears by telephone, the
15 state public defender shall be responsible for initiating and
16 paying all telephone charges incurred during the hearing.

17 The bill specifies that if the state public defender is not
18 first notified and given an opportunity to be heard on a motion
19 to review a claim for payment, any court order entered after
20 the state public defender has taken action on the claim, which
21 affects the claim, is void.

22 The bill requires the claimant to prove by a preponderance
23 of the evidence that the final agency action of the state
24 public defender violated the constitutions of the United States
25 or the State of Iowa, a statute, or an administrative rule,
26 or that the final agency action was unreasonable, arbitrary,
27 capricious, or an abuse of discretion.

28 The bill specifies that the state public defender's
29 interpretation of a statute is binding on the court unless
30 the interpretation is irrational, illogical, or a wholly
31 unjustifiable interpretation of the law.

32 Under the bill, if the state public defender provides an
33 administrative procedure for review of an action on a claim,
34 the court, during judicial review, shall not consider any
35 grounds for error unless raised with the state public defender

1 prior to the final agency action, and the court is prohibited
2 from admitting new evidence that was not previously presented
3 to the state public defender.

4 The bill also allows the state public defender to provide
5 indigent defense claims and supporting documents relating to
6 confidential juvenile records to the auditor of state, the
7 Iowa supreme court attorney disciplinary board, or grievance
8 commission, or to other state or local agencies for the purpose
9 of investigating fraud or criminal activity. Current law
10 allows the release of indigent defense claims and supporting
11 documents for the purpose of investigating fraud or criminal
12 activity but does not specifically allow for the release of
13 confidential juvenile records for the purpose of investigating
14 fraud or other criminal activity.

15 The bill makes it a serious misdemeanor for a person to
16 knowingly disclose confidential juvenile information relating
17 to an indigent defense claim except as provided in Code section
18 13B.4B(2)(c). Current law allows disclosure of confidential
19 juvenile information under Code sections 232.147 through
20 232.150.

21 The bill specifies that a parent shall have the right to
22 court appointed counsel in a termination of parental rights
23 case under Code chapter 600A if the parent is indigent.
24 Current law specifies that the parent is entitled to court
25 appointed counsel if indigent, and if the court determines
26 the person lacks the skills necessary to present the person's
27 version of the facts, and that the person has a plausible
28 defense to the termination.

29 The bill provides that a child-placing agency licensed under
30 Code chapter 238 may file a petition to terminate parental
31 rights under Code chapter 600A. Current law specifies a
32 child-placing agency as defined in Code section 238.1 may file
33 such a petition.

34 The bill specifies that if a person filing a petition
35 to terminate parental rights under Code chapter 600A is a

1 child-placing agency licensed under Code chapter 238 or if the
2 person filing the petition is indigent, the prospective parent
3 on whose behalf the petition is filed shall be responsible for
4 the payment of reasonable attorney fees in the case, unless the
5 court determines the prospective parent on whose behalf the
6 petition is filed is indigent.

7 If a prospective parent on whose behalf a petition is filed
8 is indigent, and if the person filing the petition is indigent
9 or a child-placing agency licensed under Code chapter 238
10 files the petition, the bill requires the appointed attorney
11 in the case to be paid reasonable attorney fees as determined
12 by the state public defender from the indigent defense fund
13 established in Code section 815.11.